

a\*8-42

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 42, relative to legal representation for state employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-42-101, is amended by deleting Subsection (1) in its entirety and by substituting instead the following:

(1) "Attorney General" means the state attorney general and reporter;

SECTION 2. Tennessee Code Annotated, Section 8-42-103, is amended by deleting the section in its entirety and by substituting instead the following:

(a) When a civil action for damages shall be commenced in any court by any person against any state employee as defined in this chapter for any acts or omissions of the state employee within the scope of the employee's employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain, the attorney general may, in his discretion, provide representation to the employee. Such representation may be provided (1) by the attorney general's assistants; (2) by attorneys appointed by the attorney general; or (3) by payment of reasonable compensation of counsel approved by the attorney general. Attorney's compensation, court costs, and other necessary incidental expenses in connection with the action shall be paid from the funds appropriated to the attorney general pursuant to this chapter. The method of providing representation is within the sole discretion of the attorney general. Notwithstanding any provision of the law to the contrary, the attorney general is specifically authorized to appoint attorneys and to determine their compensation to fulfill the purpose of this chapter.

(b) For the exclusive purpose of this section, "state employee" also includes attorneys appointed by a court, or other agency authorized by law to make such appointments, to represent an indigent when a civil action for damages is commenced against such attorney for any act or omission in the course of representing such indigent. Notwithstanding any provision of law to the contrary, such attorney shall not be considered a state employee for any other purpose including, but not limited to, §§ 9-8-112 and 9-8-307.

SECTION 3. Tennessee Code Annotated, Section 8-42-104(a), is amended by deleting it in its entirety and by substituting instead the following:

(a) When a criminal action is initiated in any court by warrant, information, or indictment against any state employee, as defined in this chapter, for an act apparently done by the employee in the scope of the employee's assigned official duty, the attorney general will not represent the employee or provide representation. In the event that the criminal charges against the employee are dismissed with prejudice or in the event that the employee is acquitted at trial or upon appeal, all reasonable compensation for the employee's counsel, court costs or necessary incidental expenses, as determined by the attorney general, in connection with the action, shall be payable from the funds appropriated to the attorney general pursuant to this chapter. In the event that the charges against the employee are retired or dismissed, or the case is not prosecuted for any other reason, the attorney general may compensate such counsel for all reasonable fees and necessary incidental expenses and pay court costs in connection with the action, where the attorney general finds that the employee did act in the scope of the employee's assigned duties under apparent lawful orders or authority when the employee took the actions resulting in the institution of the criminal action. In no event shall any funds be expended for compensation for counsel, court costs or necessary incidental expenses, where the employee is convicted of any criminal offense.

SECTION 4. Tennessee Code Annotated, Section 8-42-105, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 8-42-106, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 8-42-107, is amended by deleting the section in its entirety and by substituting instead the following:

(a) There shall be appropriated to the attorney general a sum sufficient from the claims award fund established pursuant to § 9-8-109, to pay for the representation provided to state employees, court costs and any necessary incidental expenses incurred in providing the representation authorized by this chapter.

(b) Subsequent to the close of each fiscal year, the attorney general shall provide to the state board of claims a report describing the manner in which funds received from the claims award fund were used in representing state employees pursuant to this chapter.

SECTION 7. Tennessee Code Annotated, Section 8-42-108, is amended by deleting the word "board" and by substituting instead the words "attorney general".

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. This act shall take effect on July 1, 1995, the public welfare requiring it.

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